

# A Knight Of The Golden Circle

By U.S. Lesh

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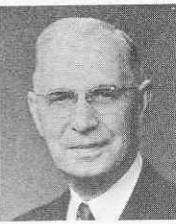
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## FOREWORD

After he had completed his education in law school, Lambdin P. Milligan came to Huntington to live. Following a period of inactivity due to poor health, he entered the practice of law and continued in that profession until his death near the end of the nineteenth century.

Milligan delivered a speech in Fort Wayne which aroused the ire of the military and led to his arrest, trial, and conviction for treason. The address was reported by a representative of the CINCINNATI ENQUIRER who was present on the occasion. Unfortunately, the local files of the Fort Wayne newspapers during the Civil War period are incomplete and the Staff of the Public Library has never been able to locate any reference to this speech.

In 1866 the Supreme Court of the United States handed down a famous decision in the case of *Ex parte Milligan* invalidating the trial, conviction, and death sentence of Milligan by a military commission. The decision reaffirmed the constitutional right of every American citizen to trial by jury under the law.

Milligan was locally revered as an able attorney and held the profound respect of the legal fraternity and the people of Huntington generally. Mr. Lesh recalls that some of the older citizens described to him the enthusiastic community welcome which Milligan received on his return to Huntington after he had been liberated from prison by the decision of the Supreme Court. Milligan was a businessman as well as an attorney. He built the brick business building which still stands on the west side of Jefferson Street just south of the Wabash Railroad. In an earlier day this was known as the Milligan Building.

U. S. Lesh, a young bachelor, came to Huntington in 1891 to practice law. He soon became acquainted with Milligan and spent many idle hours with the aging attorney in the latter's law office. Mr. Lesh recalls that Milligan was a partisan Democrat and engaged in the bitter internecine struggles of that party.

The following publication was originally delivered by U. S. Lesh as a speech before the Civil War Round Table of Chicago, September 20, 1945. The address was later published in the July 26, 1947, issue of the MICHIGAN ALUMNUS.

The Boards and the Staff of the Public Library of Fort Wayne and Allen County gratefully acknowledge the gracious permission of both author and publisher to republish the article and present the account with the assurance that it will prove interesting and informative to residents of the area.



*U. S. Lesh*

U. S. Lesh was born in 1868 in Rock Creek Township, Wells County, Indiana. He attended the local public schools in his native county and then studied for a brief period in a preparatory school. He matriculated at the University of Michigan Law School and received the bachelor of laws degree from that institution in 1891.

Thereafter, he practiced law at Huntington, Indiana, intermittently throughout his life.

Mr. Lesh's father, originally a Democrat, had voted with the Republican Party beginning with the first election of Lincoln in 1860. U. S. Lesh was nurtured from his earliest years in Republicanism and was always a stalwart Republican. He very early supported the regular organization of his party in Huntington County and liberally contributed his time and money to its welfare. He served successfully as County Attorney of Huntington County and City Attorney of the city of Huntington.

Mr. Lesh formed many close contacts with the Republican state organization. On the election of Ele Stansbury as Attorney General of the state of Indiana, that official offered Mr. Lesh the position of Assistant Attorney General. Lesh accepted the post and served in this capacity from 1917 until 1921, during the administration of Governor James P. Goodrich.

In 1920 the Republican State Convention of Indiana nominated Mr. Lesh for the position of Attorney General, and Indiana voters elected him to that high office in the same year. He was re-elected in 1922 and served during the administrations of Governor McCray and Governor Branch. The high light of Mr. Lesh's service in the legal department of the Hoosier state was the work which he did in bringing the Indiana State Fair under the general government of Indiana. Constitutional barriers seemed to forbid the integration of the State Fair Board into the state government. However, Mr. Lesh created the necessary legal basis; the step was taken and the Supreme Court of Indiana upheld the action.

After retiring from state office, Mr. Lesh formed a law partnership with his two sons and practiced in Indianapolis until 1938. Thereafter, he returned to Huntington and resumed his professional association with his brother, Eben Lesh; that connection continued until the death of Eben in 1955.

Mr. Lesh, the dean of the Huntington County legal profession, still maintains his practice in Huntington. Mr. Lesh is the author of two books--A KNIGHT OF THE GOLDEN CIRCLE (1911) and THREE PROFITEERS (1934).

I can remember the occasion rather well. It was on a winter evening, not too many years after Appomattox to have obliterated the memories. My brothers and sister had gone to a spelling match held in a one-room log schoolhouse a good half-mile upstream on the Wabash River, which skirted our farm. After mother had completed her evening chores, she and father settled down in front of the open hearth for a quiet, restful evening- -mother's nimble fingers busy knitting socks for her many boys and father perusing the latest copy of the CINCINNATI WEEKLY ENQUIRER. As I was frail and timid--not nearly so robust and bold as you might infer--I was permitted to nap on top of the wood box which flanked the hearth instead of being sent to my trundle bed in an upper room.

Because I was then too young to grasp the trend of the conversation, I cannot recall even the substance of what my parents were saying; but Zumro, Milligan, and Knights of the Golden Circle were names frequently mentioned. They were spoken of in such subdued tones and with such tense emotions as clearly to indicate to me that my parents were talking about something too terrible for others to hear--except small children too young to understand. That my mother's younger brother Jonas had been starved to death in Andersonville Prison and my father had found it necessary to sell his village store and take up farming because he had lost so many of his customers by quitting the party in the faith of which he had been reared, may help to explain their feelings.

Zumro had been the community physician during the war period, but, for even more compelling reasons than those which caused my dad to shift his home and occupation, at the time of which I speak he had removed to the West for his future home. Milligan was a leading lawyer of Huntington. Both Zumro and Milligan had been active members of the secret order, Knights of the Golden Circle. But unknown to Milligan, Zumro had his fingers crossed when he joined.

Many years later, while taking my course in law at Ann Arbor, the case of Ex parte Milligan (4 Wall. 2) was assigned for special study as the leading authority in American jurisprudence in defining the rules governing the jurisdiction of military courts and in stating the circumstances under which they may or may not rightly supersede the civil courts in the administration of the laws against public offenses, including that of treason.

Obtaining the book which contained a report of the case, I sought a quiet place in the library where other students would not disturb and read the opinion with absorbing interest. Those early memories of having heard my parents discuss Milligan and the Knights of the Golden Circle no doubt tended to emphasize my interest.

A year or so later, when I came to the bar at Huntington, I soon became well acquainted with Milligan, and after I was married, his wife made the first social call on my wife. On different occasions we were entertained at Milligan's home--the same house from which he had been taken on that early October morning in 1864, to be charged, tried, and convicted of treason.

With these personal touches tending to keep the Milligan case recurring to my mind, I concluded to get a better understanding of the facts out of which it arose. Since the case--as decided by the Supreme Court--did not involve any question of the guilt or innocence of the accused but only whether the military commission had jurisdiction to hear and determine that question, the evidence adduced before the commission was not in the proceedings before the Supreme Court. I obtained and carefully read, however, a copy of the evidence as reported by Benn Pitman, recorder for the commission.

The Knights of the Golden Circle was organized in 1856 at Havana. Its purpose was to create a new empire embracing the territory within a radius of sixteen degrees, or about 1,200 miles, of Havana. Thus, it would extend as far as St. Louis on the west, and Baltimore on the north, and include all of Central America and much of Mexico. As a dominant feature, it contemplated monopolistic control of the four staple products--sugar, rice, tobacco, and cotton. And, of course, the cherished institution of slavery would never be questioned in that extensive proposed empire.

At that early period it was hoped by the leaders of the secret order that President Buchanan would permit the withdrawal of the Southern States from the Union without resistance. And while the Knights of the Golden Circle probably did exert an influence in placing in Buchanan's cabinet some traitors--as evidenced by the extent to which the seceding states had acquired control over military forts, arsenals, and naval vessels even before the inauguration of Lincoln--there is little to indicate that President Buchanan would

have tolerated the secession program without a conflict.

After Fort Sumter had been fired on, there no longer was any need for such a secret order in the seceding states. Its scheme of organization, however, formed a convenient cover to hide the disloyal designs of the Northern sympathizers while forwarding their own plans to hinder the North and thereby help the South. In furtherance of these secret plans, they first changed the title of the organization from Knights of the Golden Circle to American Knights, and, later, to Sons of Liberty. Their local "temples" assumed variant names in different localities. To illustrate, the local unit or temple of which Zumro was a member came to be called the "Men's Bible Class." But whether this was taken by its members to conceal its identity or assigned in derision because it received a shipment of pistols labeled "Sunday-school Books," I do not know. They held some of their meetings in the log schoolhouse to which reference has been made.

These brave knights, with their holy temples, became most numerous in Ohio, Indiana, Illinois, and Missouri. They made a strong effort to carry their plans by aid of the ballot. In this, so nearly were they successful that in the state elections following Lincoln's first inauguration, they gave Governor Morton of Indiana a hostile legislative body, which refused to make any appropriation to help finance the war activities; and they almost succeeded in electing Vallandigham governor of Ohio, even though he was then a fugitive in Canada. This ballot-box program was materially helped by the absence of so many of the loyal voters in the service. But Governor Morton was perhaps the most aggressive and resourceful of the war governors, and through the aid and influence of Secretary of War Stanton, he obtained loans from private sources sufficient to carry on.

Failing to carry its plans by ballot, the secret order then pushed forward its military plans more vigorously. They contemplated an armed uprising. Initial steps were to capture the arsenals and stores of munitions in the four states mentioned, free the Confederate prisoners in those states, arm them with the guns and munitions captured, and then march to points where they could join rebel armies. It was a most ambitious concept. Morgan's raid through Kentucky, into Ohio and Indiana, was perhaps intended as the first active touch-off. And for awhile it looked as if it might

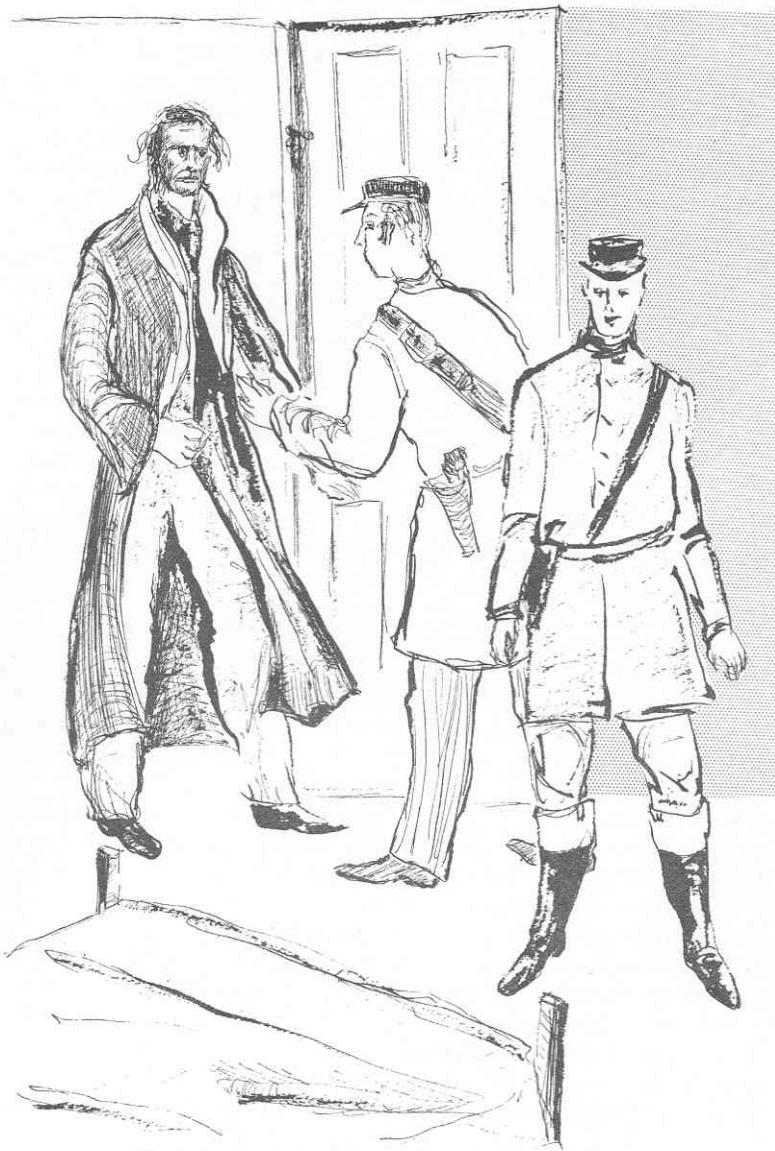
prove a blazing success. But it did not take so strongly as expected. It was premature. The secret order had not completed its military Plans.

This was the next phase: Indiana, on battle blueprints, was Divided into four sections, the National Road being the division line East and west, and the north and south line also passing through the Approximate center of the state. Each section was to be under Command of a major general, subordinate only to the Supreme Commander, Vallandigham. Milligan was so named for his section of The state, northeastern Indiana.

But this time the alert loyal leaders did not await another Morgan raid, nor an armed uprising. Nor did they care to chance Another election. They took the initiative. On warrants issued by General Hovey as military commander of the military district of Indiana, the leaders of the secret order were arrested, taken to Indianapolis, and on charges preferred against them, were booked For trial before a military commission of army officers. While Milligan stood head and shoulders above the others—he was six Feet four—he was more of a brain and character leader. There Was no duplicity in his words or acts. He believed in the doctrine Of the right of a state to withdraw from the Union, and openly so Advocated. This sincerity of conviction and courage of expression perhaps tended to augment his influence.

At an early morning hour on October 5, 1864, an unscheduled Train made an unannounced stop at an unusual place, near the Milligan Home about a mile below Huntington; and Captain Place, Jr., the Provost marshal for the military district of Indiana, accompanied By James Bratton, local “provo,” proceeded to the Milligan home, Aroused him from his sleep, and escorted him to Indianapolis, Where, along with Harrison H. Dodd and several other leaders of The secret order, he was charged with treason. The case against Dodd, who had been serving as the State Grand Commander, was First taken up; but after the commission had overruled his objections To the jurisdiction of the military court and the evidence had Progressed far enough clearly to indicate that chance of acquittal Was nil, he “walked out” on the commission and was next heard of From Canada, where his friend Vallandigham was sojourning.

This coup, accomplished perhaps by aid of some of the Guards, caused so much elation among the disloyal element and the



*They aroused him from his sleep...*

people of the South that the commission had no choice except to proceed with the other cases. And because of his outstanding ability and character, the case against Milligan was pushed to the front. Dr. Zumro also had been arrested and was being detained without charge against him. Whether this was being done to lend color to his pretended friendly relations toward Milligan while gathering information against him for use of the government, or in anticipation that an emergency might arise for requiring him to testify against his will, was not revealed. However that may have been, he became the star witness against Milligan. After hearing the evidence and arguments of counsel, the commission found Milligan guilty and pronounced sentence that he "be hanged by the neck until he be dead."

But when the papers reached the White House for the approval of the President before the execution could be carried out, Lincoln was in no such haste as had been the military commission, for there they remained pigeonholed, unacted upon at the time of his assassination. Following his succession to the presidency, Johnson promptly took up the papers, approved the proceedings of the military commission, and ordered that sentence be carried out without further delay. Accordingly, May 19, 1865, was fixed for the execution.

This situation precipitated a new tug-of-war. Milligan then filed in the Federal Court for Indiana an application for a writ of habeas corpus, thus attacking the jurisdiction of the military commission. The two judges, of which the court was then composed, being unable to agree, the cause was certified to the United States Supreme Court for its original and final action.

An exciting race commenced as to which tribunal would first be able to take action, for the time which had been fixed for the hanging would arrive before the case could be placed in proper form for decision by the Supreme Court. To meet this situation President Johnson was appealed to for the granting of a reprieve--a delay long enough to enable the Court to decide the validity of the conviction before the death sentence should be executed.

But Johnson remained obdurate. Tradition has it that he took a cruise down the Potomac to avoid being further importuned pending the time for hanging; and that since Secretary Stanton had been urging the President to grant the necessary delay for the court

to act, not to be thwarted by such a ruse, he signed the President's name to an order which delayed the hanging. However that may be, it was through the influence of Stanton and Morton that time was given for the court deliberately to consider and decide the Milligan case.

Because of the importance of the principles involved and the effect the decision of the Supreme Court might have on the course of our future history, counsel of eminent ability appeared. For the government, Attorney General James Speed was assisted by Benjamin F. Butler, who had distinguished himself at the beginning of the war by "shooting up" Baltimore for the permitting of firing on his troops while they were marching through on the way to Washington. And Milligan's local counsel, Joseph E. McDonald and John R. Coffroth, were aided by James A. Garfield, later President, and David Dudley Field, noted lawyer and jurist of New York.

The gist of the decision and importance of the principles declared can be reflected from a few brief paragraphs from the opinion as prepared by Mr. Justice David Davis, who had been Lincoln's floor manager in the Chicago Wigwam convention that gave Lincoln his first nomination to the presidency. I quote briefly from the opinion delivered by Mr. Justice Davis:

The controlling question in the case is this: Upon the facts stated in Milligan's petition, and the exhibits filed, had the military commission mentioned in it jurisdiction, legally to try and sentence him? Milligan, not a resident of one of the rebellious states, or a prisoner of war, but a citizen of Indiana for twenty years past, and never in the military or naval service, is, while at his home, arrested by the military power of the United States, imprisoned, and, on certain criminal charges preferred against him, tried, convicted, and sentenced to be hanged by a military commission, organized by the military commander of the military district of Indiana. Had this tribunal the legal power and authority to try and punish this man?

No graver question was ever considered by this court, nor one which more nearly concerns the rights of the whole people; for it is the birthright of every American citizen when charged with crime, to be tried and punished according to law. The power of punishment is, alone through the means which the laws have provided

for that purpose, and if they are ineffectual, there is an immunity from punishment, no matter how great an offender the individual may be, or how much his crime may have shocked the sense of justice of the country or endangered its safety. By protection of the law human rights are secured; without that protection, and they are at the mercy of wicked rulers, or the clamor of an excited people.

After stating some of the specific provisions of the Constitution more directly involved and briefly recalling the history of the struggle which led to the adoption of the Constitution, the opinion continues:

These great and good men foresaw what troublesome times would arise, when rulers and people would become restive under restraint and seek by sharp and decisive measures to accomplish ends deemed just and proper, and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future.

The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences, was ever invented by the wit of man, than that any of its provisions can be suspended during any of the great exigencies of government. Such doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government within the Constitution, has all the powers granted to it, which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority.

The opinion contains these prophetic words:

This nation, as experience has proved, cannot always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington

and Lincoln; and if this right is conceded, and the calamities of war again befall us, the dangers of human liberty are frightful to contemplate.

All members of the Court concurred in holding that the military commission had no jurisdiction to hear and determine the case, and its judgment was void.

In Ex parte Quirin and six others, decided by the Supreme Court in June, 1942, (317 U. S. 1) the petitioners cited the Milligan case in support of their contention that the military commission which had found them guilty of treason was without competent jurisdiction. To refute this contention Attorney General Biddle urged, among other things, that the decision in the Milligan case was not good law, and should be overruled. But the Court, in its opinion, did not overrule the prior decision, but distinguished it from the case then under consideration. The opinion points out that Milligan was an American citizen, resident of Indiana, not connected with any of the rebellious states, nor the army or navy; while in the Quirin case, the defendants were foreign citizens, connected with enemy military forces, and on landing on our shore they discarded their uniforms to carry on their activities as spies, thereby forfeiting the protection due prisoners of war.

Had the Court overruled the Milligan case, the way thereby would have been opened for the arrest and prosecution of American citizens not connected with the military forces, at any place in the country, on such charges as might be preferred by the military authorities, and before such military courts as the President, acting as Commander in Chief, or other military officers acting by his authority, might appoint for such purpose. It thus appears that the activities of the Knights of the Golden Circle of the Civil War period afforded the occasion for a decision of incalculable value by our highest court during the recent war period.